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OFFICE OF PETITIONS

In re Application of	:
John Fleming Walker	:
Application No. 10/593,386	: DECISION ON APPLICATION
Filed: December 4, 2006	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 7251/96026	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed November 9, 2009. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from 238 days to 267 days.

The application for patent term adjustment is **DISMISSED**.

On September 21, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 238 days. The instant application for patent term adjustment was timely filed¹. Applicants dispute the reduction of 29 days of PTA pursuant to 1.704(c)(8) for the filing of a supplemental information disclosure statement on July 30, 2009.

On July 1, 2009 applicants filed a response to the non-final Office action mailed March 2, 2009. Then on July 30, 2009, applicants filed a Supplemental Response.

Applicant's arguments have been considered, but not found to be persuasive. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

In this instance, the filing of the Supplemental Information Disclosure Statement on July 30, 2009 is considered a failure to engage under 1.704(c)(8). The record does not support a conclusion that the IDS was expressly requested by the examiner and neither did the IDS include a statement meeting the requirements of 37 CFR 1.704(d). See 37 CFR 1.704(d). The rule requires that information disclosure statement was first cited in

¹ PALM records indicate that the Issue Fee was also received on November 9, 2009.

a communication from a foreign patent office in a counterpart application and that communication was not received by any individual in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 238 days.

The record supports a conclusion that this application is not subject to a terminal disclaimer”

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

/Kery A. Fries/

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